CR.MA/531/2005 1/4 JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 531 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRAMODKUMAR BRIJBHUSHAN SHARMA - Applicant(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR ANKUR Y OZA for Petitioner No(s).: 1.

PUBLIC PROSECUTOR for Respondent No(s).: 1.
MR TS NANAVATI for Respondent No(s).: 2.

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CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date : 02/08/2005

ORAL JUDGMENT

1.Rule. Mr.Kogje, Ld.APP waives service of rule on behalf of respondent-State. Mr.Rahul Pandya appears

for respondent No.2 and waives service of rule. With the consent of learned advocates for the parties matter is taken up for final hearing today.

2. The short facts of the case appear to be that a complaint was filed by the respondent No.2 against the petitioner for the offences under sections 490A and 506(1) of IPC and others and the said complaint was registered vide CR No.I-239/03 of Sola Police Station and the petitioner has preferred this petition for quashing of the said complaint filed by the respondent No.2.

3. The Ld.counsel appearing for the petitioner Mr.Oza as well as Mr.Rahul Pandya for the original complainant, at the outset, have declared before this court that the matter is settled between the husband and the wife and a compromise purshis was filed before the Family Court in the proceedings of divorce which, inter alia, provided that the criminal case is to be withdrawn by the original complainant-wife. The Ld.counsel for both sides have placed on record the judgment passed by the Ld.Judge of the family court whereby the decree of divorce is passed and it is stated that as an outcome of the compromise the present complaint may also be quashed.

4. The Ld.counsels have relied upon the decision of the Apex Court in the matter of B.S.Joshi vs State of Haryana and others reported in (2003)4 SCC 675 for contending that if the matrimonial matter is settled, the cout may encourage the genuine settlement of matriomonial dispute and may quash the complaint.

5. As such, after the aforesaid settlement, with a view to ascertain the genuineness of settlement by the original complainant under her free will, the original complainant was asked to remain present and therefore she has remained present and identified by Mr.Rahul Pandya, Ld.counsel appearing on her behalf. The original complainant has stated before the court that the matter is settled and she is not desirous to prosecute the complaint and she has no objection if the complaint is quashed as per the settlement.

6. In view of the aforesaid situation and more particularly in view of the decision of the Apex Court in the matter of B.S.Josh (supra) no further discussion is required and suffice it to say that as the presennt case is a matrimonial matter and the complaint was for the offence under section 478A IPC etc and the parties have not only settled the matter but the complainant has also no objection if the

complaint is quashed, I find that if this court exercising its powers under section 482 Cr.P.C quashes the complaint with a view to see that the parties may not be required to face the criminal trial or even the investigation by the police in connection with the complaint. Hence, the complaint vide CR No.I-234/03 registered with Sola Police Station (annexure “A”) is quashed. Petition is allowed to the aforesaid extent. Rule is made absolute accordingly.

(JAYANT PATEL,J)

2.8.05/murty